ADVOCATES
FOR HIGHWAY
AND AUTO SAFETY

OA 19973

ADMINISTRATION

June 3, 1996

96 JUN 3 A10:22

FHWA97-2278-07

LEGS./REGS. DIV.

FHWA Docket No. MC-96-5
Federal Highway Administration
Office of the Chief Counsel HCC-10
U.S. Department of Transportation
Room 4232
400 Seventh Street, SW
Washington, DC 20590

Television Receivers and Data Display Units: Notice of Proposed Rulemaking, 61 FR 14733 et seq.

The Federal Highway Administration (FHWA) is proposing to rescind restrictions on the locations at which television viewers or screens may be positioned within commercial motor vehicles (CMVs) because the agency regards the regulation as obsolete, redundant, and inhibitory of Intelligent Transportation System (ITS) technology development. The FHWA claims that any unsafe behavior involving driver distraction by viewing televisions or monitors is more effectively deterred through state traffic laws concerning driver inattentiveness.

Advocates for Highway and Auto Safety (Advocates) strongly opposes rescission of this regulation. In particular, Advocates does not regard the agency as having carried its burden in this rulemaking to prepare a proper administrative record to justify rescinding 49 CFR § 393.88. The FHWA relies repeatedly in this rulemaking proposal on the claim that state laws effectively control driver inattentiveness. However, no index of such state laws is provided in this notice or in the docket file in the agency's docket room, nor is any review of any state laws or their

DOCKET mc-96-5-6 PAGE 1 OF 8

750 First Street, NE Suite 901 Washington, DC 20002 Tel: 202/408-1711 Fax: 202/408-1699
World Wide Web: http://www.saferoads.org

effectiveness provided in either place. The agency in fact is relying on an undocumented presumption that state laws effectively supersede the need for the regulation. If such laws exist, the agency must provide an listing of what they are and how they operate to deter driver inattentiveness as a legitimate substitute for the existing federal regulation.

Moreover, Advocates is not persuaded that state laws are an appropriate substitute for a federal directive to interstate motor carriers to ensure that no screen which could provide a distraction is within the driver's forward field of view.[1] In any event, proving that a crash was precipitated by a driver viewing a television screen operating off the CMV's 12-volt system, which would be permitted by rescinding § 393.88, would be extremely difficult to prove. For all practical purposes, removing the specific prohibition on driver-viewable screens from the corpus of Federal Motor Carrier Safety Regulations represents an abandonment of the federal role to the vicissitudes of post-crash investigations and of the courts. This is the same line of reasoning currently being relied upon by the National Highway Traffic Safety Administration (NHTSA) in offering numerous Federal

[1]A number of respondents to the instant docket, including large commercial freight carriers and insurance companies, have stressed their fear that abandonment of the federal role in prohibiting dangerous on-the-road practices that reduce driver vigilance will lead to "a patchwork of state regulation" that would not be effective in controlling the misuse of driver-viewable screens or the operation of their controls. See, e.g., unlogged comment from FedEx, May 30, 1996, to FHWA Docket No. MC-96-5, p. 1.

Motor Vehicle Safety Standards for rescission.[2] NHTSA argues that product liability litigation will serve to protect consumer interests in the absence of federal regulation. This is no more legitimate in the realm of new motor vehicle safety regulation than an appeal by the FHWA to state laws as justification for rescinding a regulation geared to the safety needs of interstate commerce.[3]

Also, if the FHWA rescinds this regulation it will be underwriting dangerous practices no longer prohibited in federal regulation. If each of the 50 states has replicated this specific federal prohibition on driver-viewable screens, the agency has not shown this. Advocates doubts this is the case. Consequently, drivers would no longer be forbidden to watch a television program

---

[2]Even General Motors argues that substitution of the uneven administration of state laws is inferior to a federal standard, even if that federal standard is obsolete:

> [T]he removal of federal requirements can open the door to a potential flood of new and inconsistent state requirements. From a public interest perspective, it is preferable to have a single federal requirement, even one that is outdated and/or burdensome and/or meaningless to motor vehicle safety, than [sic] it is to have up to 50 disparate state requirements on some aspect of vehicle performance. * * * A proliferation of state requirements in reaction to the rescission of federal standards would be a gross disservice to consumers by increasing vehicle prices significantly, needlessly, and with no safety benefit whatever.

NHTSA Docket No. 96-032-N01-003 (Comments of Milford Bennett, General Motor Corporation, on the agency's draft crash avoidance implementation plan, May 17, 1996, p. 4).

[3]Lancer Insurance Company, in its comments to this docket, noted "with dismay the argument that states have the right to cite a driver after an accident for driving inattentively as a justification for the deletion of this rule." Comments of the Lancer Insurance Company, FHWA Docket No. MC-96-5-1, April 18, 1996, p. 2.

while driving. This kind of dangerous distraction can promote driver loss of control, more rear-end crashes into passenger cars, more run-off-road CMV single-vehicle crashes with roadside obstacles, and, even at a minimum, more erratic lane placement which is well known to cause "shying" behavior by adjacent vehicles, especially passenger cars. Parallel displacement of vehicles from their lanes due to adjacent vehicle lateral movement is a common cause of vehicle-to-vehicle collisions.[4]

The agency's reasoning that the instant regulation forswears ITS technology using viewing screens also cannot be sustained. There is no need for the FHWA to appeal to the theoretical burden of constant piecemeal amendment of the regulation to accommodate certain species of legitimate ITS technology with screens. There are efficient ways to bestow legitimacy on certain ITS technologies if viewing their screens is not an unwarranted distraction.[5] For

---

[4]Even the American Trucking Associations (ATA), although formally supporting rescission of § 393.88, is chary of the consequences of an unregulated environment of driver-viewable screens as a result of the withdrawal of the federal role in this area. The ATA correctly points out that the elimination of this Federal Motor Carrier Safety Regulation, even though it is restricted only to television screens, permits the growth and use of Intelligent Transportation Systems technologies with driver-viewable screens to occur in a manner that can promote more driver distraction. The ATA also recognizes that the subtle understanding of the interrelationship of driver alertness and driver workload is only now beginning to be addressed. See the unlogged comments of Steven Campbell and Neil Darmstader, American Trucking Association, to FHWA Docket No. MC-96-5, June 3, 1996, passim.

[5]The agency has failed to establish that ITS technologies using driver-viewable screens are, in fact, not distracting. Many (continued...)

one thing, the use of ITS screens can be controlled through requirements that they be used only when the vehicle is not moving, or not in gear, or some other control to ensure that a performance goal of minimizing or eliminating driver distraction is achieved by nevertheless allowing certain ITS screens to be placed within the driver's forward field of view.

Moreover, the agency's unsupported statement that "[t]here is no reason to believe that § 393.888 has any beneficial effect on the behavior of drivers or motor carriers[]"[6] is an utterly

---

[5](...continued)
ITS proprietary technologies with screens have yet to be tested adequately for their on-the-road safety effects. This is a task that FHWA needs to acquit before it on the one hand underwrites the legitimacy of ITS CMV technologies with screens and, on the other, act to throw out the baby with the bathwater by rescinding § 393.88.

[6]The FHWA apparently fails to understand the fundamental deterrent effect of a federal regulation containing prohibitions even if there is no specific sanction involved for flouting it. Lancer Insurance Company, in its comments to this docket, has first-hand experience on how a good federal regulation promotes safe practices simply because it is invoked as "the law."

> As we visit policyholders, and find problems, some will listen, and others won't. I can assure you, however, when we tell someone that the activity being engaged in is 'illegal', attention and awareness are greatly heightened. It seems that carriers equate the rules and safety, <u>if there isn't a rule, it must not be unsafe</u>.

Comments of the Lancer Insurance Company, <u>op. cit.</u>, p. 2 (emphasis supplied). Lancer goes on to note the importance of the rule presumptively forbidding the hazardous practice of watching monitors while driving. With the federal rule in place,

> we have a chance to prevent the accident and by deleting the rule, we merely state that the inattention was a bad thing, and a driver citation and fine should teach him or her a lesson, meanwhile, lets go visit all of the passengers still in the hospital.

<u>Id.</u>

gratuitous claim given the fact that the agency has performed no survey or investigation of any kind as a matter of record to determine the efficacy of § 393.88. 61 FR 14733, 14734.[7] Again, it is clear that this statement is a priori and that this straw man argument is relied on by the FHWA only because it provides a facile reason for attempting to abandon the regulation. The truth of the matter is that the agency simply has not acquitted its burden of determining what is the level of effectiveness of § 393.88. It has no prior knowledge of whether the regulation is or is not effective and, absent having made a determination one way or the other before proposing rescission, the FHWA apparently feels free to exercise its discretion to jettison § 393.88.

In fact, however, this proposed rescission is not prompted by the weak arguments relied upon by the agency in the notice for eliminating the appropriate federal role in promoting safe CMV driver behavior in this area. These are prima facie inadequate and obviously crafted after the fact. This proposed rescission is instead a cynical use of the President's Regulatory Reinvention

---

[7]This conclusory assertion is belied in the comments filed by the Lancer Insurance Company which stresses that explicit invocation of the rule by company representatives has prevented thousands of motor coaches from placing monitors, video cassette recorders, and controls for both within bus drivers' forward field of view. Without the ability to appeal to such a uniform federal regulation for interstate motor coach transport, Lancer is convinced that it will be unable to prevent their clients from allowing these distractions to be placed in a way to be viewed and operated by a driver while a bus is in motion. See the comments of the Lancer Insurance Company, op. cit., p. 2.

Initiative of 1995, which the FHWA is quick to invoke in the second sentence of the notice. 61 FR 14733. It is clear that the agency feels compelled to rescind regulations in line with this executive directive and, unfortunately, this rulemaking proposal to rescind § 393.88 has been chosen to satisfy the directive.

However, the FHWA, as indicated in our foregoing arguments, has done a poor job in providing a proper record for dispensing with § 393.88. This notice is devoid of any factual basis for rescission. The agency apparently believes that its administrative discretion reaches so far that it is not compelled even to index and review the state laws which purportedly supply deterrence equivalent to the existing federal regulation, or to review the data and other information showing the efficacy or lack thereof of § 393.88, or even to indicate how the safety of the travelling public as well as CMV drivers might be better served by converting the regulation into a performance standard. Such a performance standard could set forth tentative criteria on which driver-viewable screens might be legitimate contributors to overall motor carrier safety[8] and which screens and controls should not be

---

[8]Lancer Insurance notes in its comments to the instant docket that some of its policyholders have installed back-up television cameras and receiver systems. These devices permit the driver to look into the blind spot directly behind the coach as it backs. The system is only activated when the vehicle is placed into reverse gear, and the driver uses the dash mounted monitor to assist in the driving operation. This is an example of a video system put to good use, where safety isn't compromised, it is

(continued...)

allowed within the driver's field of view while operating a CMV. Instead, the agency has proposed to quit the scene as the guarantor of public safety at the national level and instead permit the continued laissez faire growth and use of ITS technologies with screens without appropriate federal controls.[9] Lastly, the agency's proposed action would permit the use with impunity of ordinary television screens by interstate CMV drivers while operating trucks on our streets and highways.

This proposed rescission is not responsible, it is unwarranted, and it is not supported by a proper administrative record.

Respectfully submitted,

Gerald A. Donaldson, Ph.D.
Senior Research Director

---

[8](...continued)
enhanced.
Comments of Lancer Insurance Company, op. cit., p. 3.

[9]We urge FHWA to reconsider the specifics of how to accommodate safety and ITS as well as video technology. A simple rule deletion and a washing of the regulatory hands of the problems that are readily identifiable is in our opinion, inappropriate and degrades safety.
Comments of Lancer Insurance Company, op. cit., p. 3.